

REMARKS

This application has been reviewed in light of the Office Action mailed December 2, 2008 ("Office Action") and the Miscellaneous Letter mailed June 10, 2009 ("Miscellaneous Letter"). Claims 37-40, 42-49, 51, 52, 55-62, 64 and 65 are pending in the application. Claims 37 and 55 are amended in a manner that Applicant believes overcome the rejections in the Office Action. New Claims 68-73 are added. Support for the amendments and new claims can be found throughout the specification and figures of the present disclosure and recite aspects of the disclosure that Applicant is believed to be entitled. Applicant submits that no new matter or issues are introduced by the amendments and new claims. Claims 44-46 and 58-60 are cancelled without prejudice.

In the Miscellaneous Letter, the Response to Non-Final Action filed March 2, 2009 ("March 2 Response") was alleged to be not fully responsive to the Office Action. The present Supplemental Response is submitted in an effort to overcome the alleged deficiencies of March 2 Response and render the presently pending claims allowable. The present Supplemental Response including amendment is being made pursuant to a telephone conversation between the Examiner in charge of the above-identified application and Applicants' attorney, Peter B. Sorell, on June 25, 2009. Proposed limitations to the claims were discussed including the present amendments. The courtesy extended by the Examiner for conducting the telephone conversation is greatly appreciated.

In the Miscellaneous Letter, the Examiner determined that the amendments to independent Claims 37 and 55 in the March 2 Response overcome the rejections under 35 U.S.C. §102(b) over U.S. Patent No. 6,127,597 to Beyar et al. ("Beyar"). Accordingly, the presently pending claims identified above include the amendments presented in the March 2 Response and incorporate by reference the Remarks section of the March 2 Response in the present Amendment. Reconsideration and withdrawal of the rejections are respectfully requested.

In the Miscellaneous Letter, however, independent Claims 37 and 55, and new independent Claim 68 are rejected under § 102 over U.S. Patent No. 6,582,467 to Teitelbaum et al. ("Teitelbaum"). However, Applicant respectfully submits that the present invention as recited in all pending claims, as amended, including amendments additional to the amendments of the March 2 Response, is patentable over the art of record art for the following reasons. Amended independent Claims 37 and 55, and new independent Claim 68 include limitations directed to the expandable device having a stepped cross section configuration, as shown for example, in Figs. 33A and 33B and described at page 18, lines 4-21 of the present application. New Claim 68 also includes limitations directed to the portions of the expandable device being selectively and independently movable, as described at page 9, lines 4-7 of the present application.

Teitelbaum discloses a spinal fusion cage that is expanded in an intervertebral space to a uniform cross section configuration (see FIGS. 1A-1C). Further, the cage of Teitelbaum does not include walls that are selectively movable. Contrary to Teitelbaum, the present invention as presently claimed includes an expandable device having a stepped cross-section configuration whereby its outer surfaces are stepped in height. This advantageously claimed configuration provides for example, a greater anterior height that provides targeted reduction for anterior fractures.

In contrast to Applicant's presently claimed system for intravertebral reduction, Teitelbaum fails to disclose an expandable device having a first portion and a second portion movable away from one another upon expansion of the expandable element, each of the portions defining a first outer surface and a second outer surface, wherein the expandable device has a stepped cross section configuration such that in an expanded condition the first outer surfaces are separated by a first height and the second outer surfaces are separated by a second height greater than the first height. Teitelbaum in no way discloses or suggests a system for intravertebral reduction as recited in amended independent Claims 37 and 55, and new independent Claim 68 of the present application.

Because of the above distinctions and advantages of the present application, it is respectfully submitted that amended independent Claim 37, Claims 38-40, 42, 43, 47-49, 51 and 52 depending therefrom, amended independent Claim 55, Claims 56, 57, 61, 62, 64 and 65 depending therefrom, and new Claims 68-73 are patentable and not obvious over Teitelbaum. Reconsideration and withdrawal of the rejections are respectfully requested.

In view of the foregoing amendments and remarks, it is respectfully submitted that Claims 37-40, 42, 43, 47-49, 51, 52, 55-57, 61, 62, 64, 65 and 68-73 presently pending in the application are believed to be in condition for allowance and patentably distinguish over the art of record. An early notice thereof is earnestly solicited. If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call the Applicant's undersigned attorney.

Respectfully submitted,



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